

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT EDWARD MIHELIC,

Defendant-Appellant.

UNPUBLISHED

May 17, 2002

No. 225567

Kalkaska Circuit Court

LC No. 98-001866-FC

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of extortion, MCL 750.213.¹ The trial court sentenced him as a second habitual offender, MCL 769.10, to eight to thirty years' imprisonment. We reverse.

This case arose from an allegation that defendant orally threatened to have the victim killed by having her drowned in a river unless she removed the pants that she was wearing, but that belonged to defendant, and gave them back to defendant. At trial, the victim testified that under the threat, she did as defendant requested, taking off the pants and returning them to defendant. On appeal, defendant maintains that this evidence was insufficient to sustain a conviction of extortion pursuant to MCL 750.213. When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

The statute pursuant to which defendant was convicted, MCL 750.213, provides:

Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of

¹ The jury acquitted defendant on the charges of kidnapping, MCL 750.349, and first degree criminal sexual conduct, MCL 750.520b.

another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

Contained within this statute are several alternatives for maintaining a charge of statutory extortion. Here, the prosecution charged that defendant willfully made either a written or oral threat to injure or kill the victim and that the threat was made with the intent to compel the victim to do something against her will, i.e., return defendant's pants. The trial court's instructions to the jury were consistent with this theory under the statute.

In the trial court, and now on appeal, defendant maintains that the act required of the victim, i.e., the removal of the pants she was wearing that belonged to defendant and the return of them to defendant, is a minor and inconsequential act; one that is not of sufficient serious consequences on which to find defendant guilty of extortion. We agree.

When presented with an extortion case where "the act required of the victim was minor with no serious consequences to the victim" (the defendant demanded that the victim execute a useless note), this Court reversed the conviction, concluding that the offense was not one contemplated by the extortion statute. *People v Fobb*, 145 Mich App 786, 791; 378 NW2d 600 (1985); Cf *People v Pena*, 224 Mich App 650, 656-657, & n 2; 569 NW2d 871 (1997), modified and remanded on other grounds, 457 Mich 885 (1998) ("threatening a victim with harm if the victim reports a crime to the police is not a 'minor threat'"). In deciding that the extortion statute is not void for vagueness, in *People v Hubbard (After Remand)*, 217 Mich App 459, 485-486, 552 NW2d 493 (1996), this Court explained:

The Legislature did not intend punishment for every minor threat. *Fobb*, *supra* at 791. Instead, the Legislature intended punishment for those threats that result in pecuniary advantage to the individual making the threat or that result in the victim undertaking an action of serious consequence, such as refusing to report a defendant's sexual misconduct or refusing to testify. *Id.* at 792-793. Accordingly, a conviction for extortion will not be sustained where the act required of the victim was minor with no serious consequences to the victim. *Id.* at 791.

In the present case, in determining whether "the act required of the victim was minor with no serious consequences to the victim," we believe that the fact that the pants were defendant's property is rightly considered.² Further, when compared to the acts that have been the subject of other reported cases in the Supreme Court and this Court, the act at issue here only can be described as comparatively insignificant. See *Pena*, *supra* at 656 (demand that victim not report crime to police); see also *Fobb*, *supra* at 792-793, citing *People v Whittemore*, 102 Mich 519, 524; 61 NW 13 (1894) (requiring the execution of a deed); *People v Garcia*, 81 Mich App 260,

² We note that claim of right is not a defense to an extortion charge. See *People v Maranian*, 359 Mich 361, 369; 102 NW2d 568 (1960) ("The collection of a valid, enforceable debt does not permit malicious threats of injury to one's person, loved ones, or property if payment is not made.").

265; 265 NW2d 115 (1978) (urging a witness to testify untruthfully); *People v Jones*, 75 Mich App 261, 267; 254 NW2d 863 (1977) (dissuading a victim from reporting a crime); *People v Atcher*, 65 Mich App 734, 736, 738; 238 NW2d 389 (1975) (dissuading a witness from testifying). Because the return of defendant's pants was minor and without serious consequences to the victim, who admitted to taking defendant's pants less than a month before while defendant was sleeping and who testified that she intended to return them, the evidence was insufficient to sustain a conviction of extortion.

In light of our resolution of this issue, we need not address defendant's additional claims of error.

Reversed.

/s/ Donald E. Holbrook, Jr.

/s/ Joel P. Hoekstra